

Tuesday, 7 October 1947

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INTERNATIONAL MILITARY TRIBUNAL
FOR THE FAR EAST
Chambers of the Tribunal
War Ministry Building
Tokyo, Japan

PROCEEDING IN CHAMBERS

On

Paper 1290 - Motion of HIROTA, Koki, for an
order to propound certain inter-
rogatories to the Honorable Sir
Robert Craigie, former ambassador
of Great Britain to Japan, by cable.

Before:

HON. SIR WILLIAM WEBB,
President of the Tribunal and
Member from the Commonwealth of
Australia.

Reported by:

Philip Kapleau
Court Reporter
IMTFE

Appearances:

For the Defense Section:

Mr. George A. Furness, Counsel for the
Accused SHIGEMITSU.

Mr. George Yamaoka, Counsel for the
Accused TOGO.

For the Prosecution Section:

Mr. A. S. Comvns Carr.

For the Secretariat

Mr. Paul M. Lynch, Clerk of the Court.

The proceeding was begun at 1315.

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THE PRESIDENT: What is this application?

MR. YAMAOKA: I wish to appear on behalf of HIROTA, Koki on the motion for an order to propound certain interrogatories to Sir Robert Craigie, former ambassador to Japan, by cable. It is paper No. 1290.

The reasons in support of the application are sufficiently set forth in this paper, and the proposed interrogatories to be propounded are set forth and appended to the application.

I request that an order be issued by your Honor in accordance with said application.

THE PRESIDENT: Mr. Comyns Carr.

MR. COMYNS CARR: I am afraid I object to almost all the interrogatories in detail, to a greater or less extent.

No. 2, as it stands, invites a vague essay. I suggest that it might be altered to read: "Please state in reasonable detail what was the extent of your official and private acquaintance with HIROTA, Koki during your service as ambassador in Japan." Otherwise he might write a whole essay.

Question No. 3 is, in our submission, altogether too vague: "While Mr. HIROTA occupied the office of

Foreign Minister and Prime Minister did he ever advise you with respect to the attitude of the Japanese Government toward relations with Great Britain and all other foreign countries?" He might append half of his book in answer to that question. Our submission is that it should be made much more specific than that. If they are referring to a particular occasion, they should mention it.

Then No. 4: "During your service in Japan did you ever observe or obtain reliable information with respect to the exertions on the part of Mr. HIROTA tending to arrest extreme views entertained in some quarters in Japan?" That is an entirely leading question; "reliable information" invites unlimited hearsay without source.

As to No. 5, the only objection there is that Sir Robert Craigie can't answer anything about the American Government; he can answer about the British Government. I have no objection to that question otherwise.

No. 6 is a leading question, begging the point at issue, because it speaks of the "accidental" shelling of the LADYBIRD, which word, in my submission, should in any case come out. But apart from that we already have the official explanation in evidence that Mr. HIROTA gave and all that Sir Robert Craigie can do is repeat it from memory, and so for that reason I object to that question.

altogether.

Question No. 7 I object to altogether, because it is, in effect, asking for Sir Robert Craigie's opinion on the very questions, one at least of which -- the other isn't phrased in accordance with the Indictment at all -- but one of which at least the Tribunal has to determine. The first one isn't phrased according to the Indictment. That is not the allegation of the Indictment; the second one is. The first one if properly phrased and the second one, anyway, are the very questions which the Tribunal has to determine, and it does not make it any the less an invitation to his opinion because it begins "Did you ever observe any activity on the part of Mr. HIROTA or the Japanese Foreign Office tending to show ..." Whether it tends to show or not is asking for his opinion.

As to No. 8, how could he know the basic reasons which influenced Japan not to accept the Brussels invitation? The most he can say is what they told him, and I object to that question.

No. 9 is, again, a leading question, assuming Mr. HIROTA did make efforts, and furthermore, it invites his opinion about matters which he couldn't possibly know. He can know with regard to the latter part of the question what communications HIROTA made to him with regard to restoring peace in China, but he can't know what

HIROTA did outside of that.

Question No. 10 is one to which Sir Robert Craigie couldn't possibly give an answer except in general hearsay.

No. 11: "Do you have any information with respect to Mr. HIROTA's position as a private citizen in regard to the Tripartite Pact?" There again it is inviting vague hearsay. The question he can be asked is. "What did Mr. HIROTA tell you?"

Question 12 is simply asking him to form an opinion. He can tell us what Mr. HIROTA said but not his opinion as to whether Mr. HIROTA exerted his best efforts.

Question 13 is such a vague question it couldn't possibly be admitted, inviting him to say anything else that comes into his head. In my submission, this question would have to be completely redrafted to be proper for the Tribunal to have it sent out.

THE PRESIDENT: This is a queer position. If I were a trial judge in Australia, I could decide all these questions, knowing what I would do in court. I don't know what will happen in the court if these questions were allowed to be submitted as they are; they may or may not be rejected.

The question did not arise so sharply at Nuern-

berg, where Lord Lawrence could consult one colleague and know exactly what the decision would be in court, because there were only four and he had a casting vote. I have ten colleagues. I may give expression to my views of what is admissible or inadmissible here only to find that I am not agreed with by a majority of the Court, which comprises eleven Judges. It is a rather peculiar situation. I almost feel inclined to let the defense ask any questions they like and take the risk of the Court rejecting or accepting them.

There is no similarity between these proceedings and that in any national court. That is the difficulty of eleven Judges having to decide questions of fact to admit or reject evidence.

I might say that according to my view, this question can't be put; the answer would be inadmissible if it were. It is swearing the issue or it is begging the question, like the accidental shelling of the LADY-BIRD. A majority of my colleagues might not agree with me. I have no way of finding out, and I am inclined to let the defense put whatever questions they think fit and take the risk of having them accepted later; but they ought to be guided by their experience with what has happened to date about some of the things that Sir Robert Craigie and Mr. Grew have said. I think it would be a

waste of time to invite those two to express opinions, so I agree fully with Mr. Carr that, according to my idea of what is admissible or what is inadmissible, the changes he suggests should be made.

MR. COMYNS CARR: If that is your view, your Honor, may I suggest to my friend, for his own sake, that he reconsider the questions and then puts in what he likes and takes his chances of their being objected to when they are submitted. I have no objection to that procedure. I fully see the difficulty of your ruling at this stage about that. On the other hand, I can quite see from my friend's point of view that he would like to know whether his questions are going to be accepted or not.

THE PRESIDENT: I know how carefully, when we are considering questions of interrogatories in chambers, we go into these matters of evidence, and the Judge can say, "That decision I give here will be the decision when I try the case later on." But that is not so today, far from it.

MR. YAMAOKA: I am perfectly agreeable, Sir William, to sit down with Mr. Carr and revise some of these questions.

THE PRESIDENT: In the light of your experience with this Court's decisions in these matters, I think

that is the best we can do.

Major Furness, do you have the same interest?

MR. COMYNS CARR: I have indicated to my friend Mr. Furness which of his questions I object to, and if he cares to revise them and take the same chance as Mr. Yamaoka, I shall raise no objection.

MR. FURNESS: I come in because under Paper No. 277 an order was issued authorizing me to interrogate Sir Robert Craigie, and I thought that if this was handled by cable, my questions could be handled in the same way at the same time. I am not a party, of course, to Mr. Yamaoka's application, but since my questions deal with the same type of subject and is addressed to the same man, I thought we could handle the one message.

THE PRESIDENT: In the light of what I said, have you any guidance at all, Major Furness?

MR. FURNESS: Yes, I have.

THE PRESIDENT: I think we can meet you by having the questions and answers cabled. Will that be sufficient?

MR. FURNESS: I don't think Mr. Carr's objections to my questions are based on the same arguments.

THE PRESIDENT: They may not be. Will I have time now to go into them? Will tomorrow morning be all right?

MR. COMYNS CARR: In view of what you have said, is there any object in your going into it further?

THE PRESIDENT: I am trying to get you to agree. As a result of your discussion with me you may agree on it.

MR. COMYNS CARR: Wouldn't it be better, as you suggested just now, that my friends should take their own course, and if there are any objections to the questions as they finally submit them, they should be taken before the Tribunal.

MR. FURNESS: I personally don't think that would be a good idea, particularly in Mr. Yamaoka's case, because if Mr. Yamaoka agrees with Mr. Carr he may find more of the answers to his questions are admitted than if he sent them out blind this way.

MR. COMYNS CARR: I gather from what Mr. Yamaoka said to me that in any case he proposes to revise these questions.

MR. YAMAOKA: Yes.

MR. COMYNS CARR: But I can't take any responsibility. I must reserve the right to object to the questions and answers when they come in unless a ruling is given now.

THE PRESIDENT: But I can give no ruling binding my colleagues.

I will adjourn this until nine o'clock tomorrow morning. In the meantime you may have a better suggestion.

(Whereupon, at 1325, the proceeding was concluded.)

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